

FILE COPY

MOTION FILED JAN 13 1961

Office of the Clerk, U.S.

FILED

FEB 20 1961

JAMES R. BYRONING, Clerk

IN THE
Supreme Court of the United States

OCTOBER TERM, 1960

No. 4

INTERNATIONAL ASSOCIATION
OF MACHINISTS, ET AL.,

Appellants,

v.

S. B. STREET, ET AL.,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF GEORGIA

**MOTION FOR LEAVE TO FILE A BRIEF AS
AMICUS CURIAE**

and

**BRIEF FOR KENNETH L. HOSTETLER, ET AL., AP-
PELLANTS IN THE PENDING CASE OF HOSTETLER
v. BROTHERHOOD OF RAILROAD TRAINMEN, NO.
8185, NOW PENDING IN THE UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT**

HERBERT M. BRUNE,

10 Light Street

Baltimore 2, Maryland

Attorney for Kenneth L.
Hostetler, et al.

INDEX

TABLE OF CONTENTS

MOTION FOR LEAVE TO FILE

BRIEF

PRELIMINARY

ARGUMENT

- I. The Injury of Which the Plaintiffs Properly Complain Is Their Threatened Discharge, Under the Compulsion of Federal Law, for Failure to Pay Dues Illegally Demanded by the Union Appellants**
- II. The Union Dues Were Illegally Demanded, and the Union Shop Agreement Is, Therefore, on the Present Record, Unenforcible**

Reasons

- A. Violation of Constitutional rights
(not discussed herein)**
- B. Violation of statute if read with constitutional limitations
(not discussed herein)**
- C. The connection between the dues collected and the political contributions and expenditures admittedly to be made therefrom is such that the union shop agreement is being made to serve as an essential link in the chain by which the unions acquire and channel funds in large amounts to illegal purposes in violation of the Corrupt Practices Act**

• CONCLUSION

TABLE OF CITATIONS

Cases

- Forsythe v. Woods, (1871) 11 Wall. 484, 14
 Hostetler v. Broth. of R.R. Trainmen, 183 F.
 Hostetler v. Broth. of R.R. Trainmen, No. 8
 ing) Ct. of Apps. 4th Circ.
 Municipal Investors Assn. v. City of Bir
 (1942) 316 U.S. 153, 62 S. Ct. 975
 Railway Emp. Dept. A.F.L. v. Hanson, (
 U.S. 225, 76 S. Ct. 714
 United States v. United Automobile Workers
 352 U.S. 567, 77 S. Ct. 529

Constitutions and Statutes

- U.S. Constitution, First Amendment
 Federal Corrupt Practices Act, U.S. Code
 Sec. 610
 Railway Labor Act, U.S. Code, tit. 45, esp. 5

	PAGE
14 L. Ed. 207	11
F. Supp. 281	2
8185 (pend-	1
Birmingham,	7
, (1956) 351	6
rkers, (1957)	10
ites	9
Code, tit. 18,	2, 6, 7, 10, 11
sp. Sec. 152	9

IN THE
Supreme Court of the United States

OCTOBER TERM, 1960

No. 4

INTERNATIONAL ASSOCIATION
OF MACHINISTS, ET AL.,

v.

S. B. STREET, ET AL.,

ON APPEAL FROM THE SUPREME COURT OF CALIFORNIA

**MOTION FOR LEAVE TO FILE A BRIEF
AMICUS CURIAE**

Kenneth L. Hostetler, et al., constituting all of the Appellants in the case of *Hostetler, et al. v. Brotherhood of Railroad Trainmen*, No. 8185, now pending in the United States Court of Appeals for the Fourth Circuit, respectfully move for leave to file a brief as *amicus curiae* in this case in support of the individual appellants.

Various briefs in the capacity of *amicus curiae* on behalf of the union appellants in this case have been filed with the Order of Court and after consent of the opposing party had been requested and refused. Upon recent e

of all of the briefs filed, including the Brief of the appellants, filed January 5, 1960. Movants have concluded that they not only have no interest in the outcome of this case but also have no considerations which they deem to be necessary to be presented to the Court in any of the briefs heretofore filed. Accordingly, they respectfully request the Court to permit the filing of this brief notwithstanding the imminence of the hearing on reargument and the subsequent impossibility of endeavoring to present the views of the opposing parties, and point out that this brief was filed within five days after they obtained the briefs heretofore filed.

As will appear from the opinion of the Court in *Hostetler v. Brotherhood of Railroad Trainmen*, 381 U.S. 281, the pending case in the Fourth Circuit involves the effect of political contributions made by a union, made out of dues funds, on the union shop agreement. That case was argued before the Court of Appeals on November 8, 1960, and was not yet decided. Hence, the decision in this case is decisive of the issue now before the Court of Appeals.

Your Movants are advised and believe that this case contains clear evidence that the union has made many of the political expenditures and many of the political expenditures to have been made by the union appellants from the funds constituted violations of the Federal Corrupt Practices Act; and that this Court should consider whether the application of that Act would justify the decree of the Georgia court which is questioned herein. The individual appellants have refrained from raising this question but it is inherent in the case and your Movants suggest that if the decision is rendered in favor of the appellants, the

Brief Upon Reargu-
1961, counsel for the
t only have a deep
out that substantial
e material have not
the numerous briefs
pectfully request the
notwithstanding the
ment and the conse-
procure consent of
that this Motion is
tained access to the

the District Court in
d *Trainmen*, 183 F.
urth Circuit directly
utions by a railroad
e enforcement of its
as argued before the
and has not yet been
case may well be de-
rt of Apepals.

ve that the Record in
t the political contri-
penditures admitted
pellants out of dues
ederal Corrupt Prac-
d consider *sua sponte*
t would sustain and
ourt which has been
pellees have refrained
herent in the Record.
ne decree can be sus-

tained on any obvious ground whether raised by the
or not, it would be the duty of this Court not to re-
decree.

This point is not covered in any of the briefs;
further suggested that the briefs heretofore filed
present squarely the basic and decisive issues, as
shown in the Movants' Brief attached hereto.

Wherefore, the Movants Kenneth L. Hostetler
move the Court for leave to file the brief annexed
on the merits of the questions raised by the appeal.

Respectfully submitted,

HERBERT M. BRUNE,
10 Light Street
Baltimore 2, Maryland
Attorney for Kenneth L.
Hostetler, et al.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1960

No. 4

INTERNATIONAL ASSOCIATION
OF MACHINISTS, ET AL.

v.

S. B. STREET, ET AL.,

ON APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

BRIEF OF KENNETH L. HOSTETLER
AS AMICUS CURIAE

PRELIMINARY

The briefs heretofore filed in this case squarely what are here conceived to be the decisive issues.

1. *The Brief of the Solicitor General* because the statute and the agreement bear on their face, valid, there can be no contention to the exaction of dues from the plain discharge from employment if they fail to

It thereby ignores the fact that the statute is being applied to compel the payment of money by plaintiffs, to be applied to political purposes of which they disapprove. It is this compulsion, and the sanction of discharge under governmental power, of which the plaintiffs are entitled to complain. The Solicitor General has misconceived the nature of the plaintiffs' injury when he confines it to the misapplication of dues funds after they have been collected.

2. *The Brief of the Individual Appellees (Plaintiffs)* leans far toward attacking the statute itself. Thus, they assume a substantially greater burden than is necessary, since it is not the statute itself but rather the application of the statute made by defendants to compel illegal exactions in this case, which constitutes the real injury and invasion of the plaintiffs' constitutional rights. (This distinction appears to be recognized by the Individual Appellees in their Reply Brief at pp. 63 ff.).

3. *The Brief of the Union Appellants* relies heavily upon the supposed intention of Congress, in enacting the statute, to permit the exaction of dues to be devoted to political purposes. Even assuming this construction to be correct, despite the contrary view of the Solicitor General, the unions do not attempt to meet the Appellees' constitutional objections to the statute as so interpreted and applied, except by citing the *Hanson* case, which, by the terms of the majority and concurring opinions therein, did not answer the question.

Neither the pleadings nor the briefs consider the effect of the Federal Corrupt Practices Act. Since this point has not been considered below, ordinarily it would not be considered on appeal. However, if the decree of the Georgia Court is clearly sustainable on any grounds apparent on

the face of the Record, it would seem the duty of this Court to uphold the decree, whether or not such grounds have been seasonably presented and argued. This Court cannot be denied the power, *sua sponte*, to apply any statute which it finds in the record, or of which it takes judicial notice, if the application of such statute to the record will fully justify and sustain the lower court's decree. Cf. *Municipal Investors Assn. v. City of Birmingham* (1942) 316 U.S. 153, 62 S. Ct. 975.

The considerations suggested above as the basic issues will be presented briefly under the following subject headings:

I. The injury of which the plaintiffs properly complain is their threatened discharge, under the compulsion of federal law, for failure to pay dues illegally demanded by the union appellants;

II. The union dues were illegally demanded, and the union shop contract is therefore, on the present record, unenforceable:

A. Because the admitted use of a "substantial" part of such dues for political objects opposed by plaintiffs renders the compulsive payment of the dues a violation of their constitutional rights;

B. Because, if the statute is read as intended to be subject to constitutional limitations, the compulsive payment of the dues under sanction of discharge would constitute a violation of the statute itself;

C. Because the connection between the dues collected and the political contributions and expenditures admittedly to be made therefrom is such that the union shop contract is being made to serve as an essential link in the chain of acquiring and channeling funds in large amounts to illegal purposes in violation of the Corrupt Practices Act.

ARGUMENT

I.

THE INJURY OF WHICH THE PLAINTIFFS PROPERLY COMPLAIN IS THEIR THREATENED DISCHARGE, UNDER THE COM-PULSION OF FEDERAL LAW, FOR THE FAILURE TO PAY DUES ILLEGALLY DEMANDED BY THE UNION APPELLANTS.

In any inquiry such as the present, it is essential to define precisely the injury inflicted or threatened which represents an invasion of the plaintiff's constitutional rights.

The Solicitor General takes the position that the injury in this case is the diversion of dues funds, after they have been collected by the unions, to purposes not germane to collective bargaining, or otherwise objectionable. The short and conclusive answer to this is that, once the dues are paid, title to the fund is in the organization, not the individual. Thereafter, a diversion to improper purposes is an injury to the organization rather than to the individual contributor; and insofar as the contributor may be heard to complain, he is asserting a *derivative right* on behalf of the organization rather than a right of his own. This is particularly clear in the familiar instance of a stockholder's suit to enjoin or redress the diversion of corporate funds, so familiar that no authority need be cited therefor.

The injury to the employee must therefore be found otherwise than in the improper diversion of dues after they are collected. The injury lies in the direct impact of the union shop agreement, backed by the statute, on the individual employee, either through his compulsive payment of dues, or his loss of employment due to non-payment of dues, for these are the only alternatives offered him.

If the employee is being compelled to pay dues, a "substantial" part of which, as shown by this record, is to be devoted to political purposes contrary to his own political

views, it is the improper exaction of the money which constitutes the injury to him, not its subsequent diversion after he no longer holds legal or equitable title thereto.

Moreover, if he refuses to pay the dues, and is consequently threatened with discharge, it is the discharge or imminent threat of discharge which constitutes his injury.

II.

THE UNION DUES WERE ILLEGALLY DEMANDED, AND THE UNION SHOP AGREEMENT IS THEREFORE, ON THE PRESENT RECORD, UNENFORCEABLE.

There are several independent legal reasons why the attempted exaction of dues from the plaintiffs, on penalty of their discharge, is improper and illegal. Since part of the dues (a "substantial" part) will admittedly be devoted to political purposes in conflict with the political views of the plaintiffs, to compel payment by them, on penalty of forfeiture of employment, is, as shown in the briefs of the individual appellees, a violation of their constitutional rights, especially their rights under the First Amendment. If the statute authorizes such compulsion, the statute is, to that extent, or its application in these circumstances is, unconstitutional. *Secondly*, if the statute is construed as limited to the area in which it may operate without constitutional conflict, then the compulsion of dues is not permitted by the statute and is illegal as in violation of the Railway Labor Act read as a whole. *Thirdly*, and we conceive this to have become highly important as the case has developed, the Record shows that many of the admitted political activities and contributions financed out of dues funds, and which will continue to be financed out of dues funds, fall directly within the ban of the Corrupt Practices Act, as construed by this Court.

A. and B. The first two of these independent grounds determining that the dues are exacted, in substantial part, for illegal purposes, are covered in the Briefs of the individual appellees.

The third ground we will discuss briefly.

C. *The connection between the dues collected and the political contributions and expenditures admittedly made therefrom is such that the union shop contract being made to serve as an essential link in the chain by which the unions acquire and channel funds in substantial amounts to illegal purposes in violation of the Corrupt Practices Act.*

1. Dues funds are devoted in substantial part to contributions to political campaign funds. Such dues funds are in part first transferred to the Railway Labor Executive Association; thence to the "educational fund" of the Railway Labor's Political League, and thence to the "free fund" of the League. From the free fund they are directly contributed to campaign chests. A more clearly established and admitted violation of the Corrupt Practices Act can be difficult to envision. Moreover, general dues funds are also used to finance propaganda, pamphlets, newspapers, magazines and other means designed to influence the minds of the general public. This, too, is a direct violation of the Corrupt Practices Act. *United States v. United Automobile Workers*, (1957) 352 U.S. 567, 77 S. Ct. 529; U.S.C.A. title 18, sec. 610.

2. The union shop agreements, as shown in this case, are a vital part of the process of obtaining and spending these political funds. They furnish the appropriate sinews which sustain the illegal political activity. Therefore, the upholding and enforcement of the union shop agreements in this case, with full knowledge of the facts and full acknowledgment by the unions, that the

so derived will be used in substantial part for purposes which the Court knows to be in violation of the Corrupt Practices Act, would seemingly harness the supreme judicial power of the United States to aiding and facilitating such violations of law. A contract so administered as to facilitate and directly aid a violation of the criminal law founded on a strong public policy is itself so infected with illegality as to require that it be not enforced at the behest of a guilty party. Cf. *Forsythe v. Woods*, (1871) 11 Wall. 484, 14 L. Ed. 207.

CONCLUSION

For the three independent reasons stated, the decree below, having the effect of enjoining the collection of dues from the plaintiffs and their discharge for failure to pay, was correct in all substantial respects and should be sustained. Moreover, if this Court is disposed to give heed to the Solicitor General's recommendation that the "delicate" constitutional questions presented in this case should be avoided, because of "intense feelings" or otherwise, the decree below can and should be affirmed as a necessary means of preserving the integrity of the Federal Corrupt Practices Act, and without reaching the constitutional questions which would otherwise require decision.

Respectfully submitted,

HERBERT M. BRUNE,
10 Light Street
Baltimore 2, Maryland

Attorney for Kenneth L.
Hostetler, et al.

APPELLANTS' OPPOSITION
TO MOTION FOR LEAVE
TO FILE BRIEF AMICUS
CURIAE (HOSTETLER)

IN THE
Supreme Court of the United States

OCTOBER TERM, 1960

INTERNATIONAL ASSOCIATION OF MACHINISTS, ET AL.,
Appellants,

S. B. STREET, ET AL., Appellees.

On Appeal from the Supreme Court of Georgia

**APPELLANTS' OPPOSITION TO MOTION FOR
LEAVE TO FILE BRIEF AMICUS CURIAE
(HOSTETLER)**

MILTON KRAMER
LESTER P. SCHWENT

AND KRAMER
1625 K Street, N. W.
Washington 6, D. C.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1960

No. 4

INTERNATIONAL ASSOCIATION OF MACHINISTS
Appellants,

v.

S. B. STREET, ET AL., *Appellees.*

On Appeal from the Supreme Court of Georgia

**APPELLANTS' OPPOSITION TO MOTION
LEAVE TO FILE BRIEF AMICUS CURIAE
(HOSTETLER)**

On January 17, 1961, the day oral reargument in this case commenced, appellants were served with a copy of the Motion and Brief of Kenneth A. Hostetler. Apart from the numerous rules of this Court which are violated by the Motion and tendering of the Motion, should be denied for at least two reasons.

No explanation is offered for the extreme haste of the Motion other than the simple statement

is filed "within five days after they obtained a copy of the briefs heretofore filed". The Clerk's office does not keep briefs confidential, and permits their examination at reasonable times. Furthermore, briefs amicus curiae should be filed at the same time as the brief of the party it supports, not after examining all the briefs of all parties.

No useful purpose would be served by granting the Motion. The Brief is predicated on a misapprehension of the facts. No record references are made in support of the factual statements. It is not true that funds are transferred from the "educational fund" to the "free fund" of Railway Labor's Political League. And even if such statement were true, or if there were otherwise a violation of the Corrupt Practices Act, it is not perceived why such circumstance should result in the enjoining of a union-shop agreement if other remedies are available. Apart from criminal sanctions, a remedy would be afforded by Section 8(d) of the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519, 29 U.S.C., Sec. 501. Furthermore, the Brief misconceives the nature of this action. It urges that this Court should not enforce the agreement "at the behest of a guilty party". We are in this case asking any court to enforce the agreement.

We submit that it is abundantly clear that the Motion should be denied.

Respectfully submitted.

MILTON KRAMER
LESTER P. SCHOENE

SCHOENE AND KRAMER
1625 K Street, N. W.
Washington 6, D. C.